

ORDINANCE NO. 3816

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT 1910 WEST ROOSEVELT AVENUE INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO, ZONING THE SAME RP SUBJECT TO THE TERMS OF THAT CERTAIN DEVELOPMENT AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE CITY OF NAMPA, AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That the following described real property located at 1910 West Roosevelt Avenue, and all thereof, be, and the same is hereby, annexed and made a part of the City of Nampa, Idaho. That the real property hereby annexed is described as follows, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That the real property so annexed, as described in Exhibit A above, shall be zoned RP.

Section 3: That this annexation and zone ordinance is subject to and limited by that certain Development Agreement entered into between the parties.

Section 4: That the City Engineer is hereby directed to alter and change the Use and Area Map of the City of Nampa, Idaho, to comply with this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 2nd DAY OF September, 2008.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 2nd DAY OF September, 2008.

Approved:

By

Donald Dale
Mayor

Attest:

Diana Fleming
City Clerk

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TECHNICAL SUPPORT

2008 SEP 5 PM 3 04
WILLIAM H. HURST
CANYON COUNTY RECORDER
BY William H. Hurst

RECORDED


2008048340

State of Idaho)

Canyon County)

On this 2nd day of September, 2008, before me, the undersigned, a Notary Public in and for said State, personally appeared Tom Dale and Diana Lambing known to me to be the Mayor and City Clerk, of the City of Nampa, Idaho, a municipal corporation, who executed the foregoing instrument.

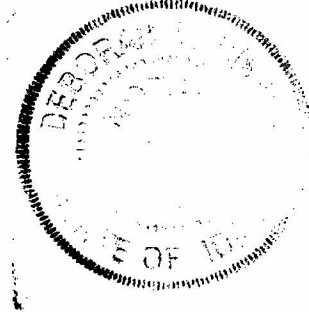
In Witness Whereof, I have hereunto set my hand and affixed by official seal, the day and year in this certificate first above written.

_____

Deborah L. Bishop

Residing at: Nampa, Canyon County, Idaho

My Commission Expires: 6/13/2013



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EXHIBIT "A"

A portion of the Southeast Quarter of the Northwest Quarter, Section 29, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, more particularly described as follows:

Commencing at an iron pin with aluminum cap marking the center of Section 29, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, said point being the TRUE POINT OF BEGINNING; thence North 89°53'20" West 606.00 feet along the Southerly boundary of the said Southeast Quarter of the Northwest Quarter, Section 29 to a point; thence North 0°27'15" East 40.00 feet to a 5/8 inch iron pin on the future Northerly right-of-way line of West Roosevelt Avenue; thence continuing North 0°27'15" East 609.63 feet to a 5/8 inch iron pin which is 35.00 feet, measured at right angles, Southwesterly from the centerline of the Wilson Drain; thence continuing North 0°27'15" East 45.07 feet to a point on the said centerline of the Wilson Drain; thence South 50°30'00" East 779.39 feet along said centerline of the Wilson Drain to a point on the Easterly boundary of the said Southeast Quarter of the Northwest Quarter, Section 29; thence South 0°15'35" West 45.19 feet along said Easterly boundary of the Southeast Quarter of the Northwest Quarter, Section 29 to a 5/8 inch iron pin which is 35.00 feet, measured at right angles, Southwesterly from the said centerline of the Wilson Drain; thence continuing South 0°15'35" West 114.91 feet along the said Easterly boundary of the Southeast Quarter of the Northwest Quarter, Section 29 to a 5/8 inch iron pin on the future Northerly right-of-way line of West Roosevelt Avenue; thence continuing South 0°15'35" West 40.00 feet along said Easterly boundary of the Southeast Quarter of the Northwest Quarter, Section 29 to the POINT OF BEGINNING.

Exhibit "A"

Legal Description

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**ANNEXATION AND ZONING TO
RP (RESIDENTIAL PROFESSIONAL)
AT 1910 W. ROOSEVELT AVE.
(A 6.22 ACRE PORTION OF THE SE ¼
OF THE NW ¼ OF SECTION 29, T3N,
R2W, BM) FOR RICHARD W. BUDGE.
PROJECT #13-07234**

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1 inch equals 500 feet

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 26th day of August, 2008 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City**," and Richard Budge, hereinafter referred to as "**Owner/Developer**."

RECITALS

- A. Owner/Developer is the owner of approximately 6.2 acres of real property legally described in **Exhibit "A"** attached hereto and made a part hereof (the "**Property**").
- B. Owner/Developer applied to City on 2nd day of November, 2007 (the "**date of application**") for annexation of the Property into City and for (re)zoning of the Property to RP (Residential Professional) in anticipation of the development and construction of a mixed use business park (the "**Project**").
- C. City, pursuant to Section 10-2-5, Nampa City Code, and Idaho Code Section 67-6511A, has the authority to rezone the Property and enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses that are appropriate in the area.
- D. City's Planning and Zoning Commission and City's City Council have held public hearings as prescribed by law with respect to the annexation, rezoning and development of the Property and this Agreement. City has approved the annexation and requested rezoning of the Property to RP subject to the terms and commitments contained in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated below, and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. This Agreement shall not prevent City, in subsequent actions applicable to the Property, from applying new ordinances and regulations of general application adopted by City in the exercise of its police powers that do not conflict with the parties' commitments applicable to the Property as set forth herein, or the zoning designation approved hereby as the Property has been deemed suitable for the uses allowed within said zoning designation..
2. The Project shall be developed in general conformance with the conceptual plan attached hereto as **Exhibit "B"** and made a part hereof (the "**Conceptual Plan**"); provided, however, that Owner/Developer shall have limited flexibility to develop the Property to meet market conditions, and the only specific commitments concerning development of the Project which Owner/Developer is making are set forth herein. Upon recordation of this Agreement, Owner/Developer shall have all approvals required from City for development of the Project in general conformance with the Conceptual Plan.

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3. This Agreement is intended to be supplemental to all other local, city, state and federal Code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

4. The provisions and stipulations of this Agreement shall be binding on City, Owner/Developer, each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property and are, in no particular order, as set forth in the conditions of approval attached hereto as **Exhibit "C"**, and by this reference incorporated herein.

5. This Agreement may be modified only by the written agreement of Owner/Developer and the City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5(D) or successor provisions.

6. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner/Developer to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner/Developer or its successors and/or assigns fails to cure such failure as set forth below.

7. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner/Developer, or each subsequent owner or each person acquiring an interest in the Property, to comply with the commitments contained herein within two (2) years after the Effective Date, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner/Developer's failure to comply with the terms and conditions of this Agreement to Owner/Developer and Owner/Developer fails to cure such failure within six (6) months of Owner/Developer's receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner/Developer, and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

8. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is file. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

9. It is intended by the parties that this Agreement shall be recorded on the Effective Date or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement

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shall run with the Property and shall be binding upon City, Owner/Developer, each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

10. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be effected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

11. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner/Developer and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the parties or their successors-in-interests or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

12. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction.

13. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

14. In the event Owner/Developer, its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner/Developer or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

a. A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner/Developer of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights of remedies of Owner/Developer or apply to any subsequent breach of any such or other covenants and conditions.

b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner/Developer shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a

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subsequent owner of a portion of the Property shall constitute a default by Owner/Developer for the portion of the Property still owned by Owner/Developer.

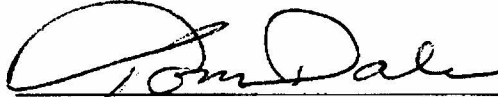
c. In the event the performance of any obligation to be performed hereunder by either Owner/Developer or City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

d. In addition to the remedies set forth above, in the event of a default by Owner/Developer, or any other party claiming an interest herein, City may withhold building permits for any remaining lots within the development until such time as the default is cured.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this day and year first above written.

CITY OF NAMPA




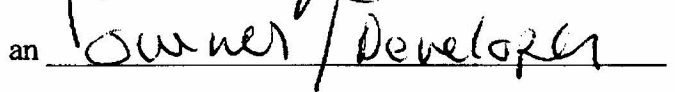


Tom Dale, Mayor



Attest: Diana Lambing, City Clerk

OWNER/DEVELOPER


an 

By _____

By _____

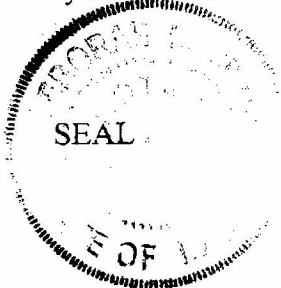
STATE OF IDAHO)
) ss.

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County of Canyon)

On this 2nd day of September, in the year of 2008, before me Deborah L. Bishop, personally appeared Tom Dale, known or identified to me, to be the Mayor of the City of Nampa, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Nampa.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Deborah L. Bishop

Notary Public for State of Idaho

Residing at Nampa, Canyon County, Idaho

Commission Expires: 6-13-2013

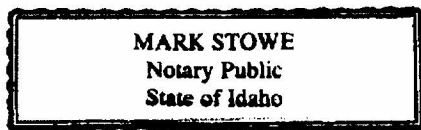
STATE OF IDAHO)

) ss.

County of Canyon)

On this 2nd day of September, in the year of 2008 before me, Mark Stowe, personally appeared Richard Budge, known or identified to me, to be Owner/Developer, of 1910 W. Roosevelt Ave, the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and on behalf of Owner/Developer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



SEAL

Mark Stowe

Notary Public for State of Idaho

Residing at Meridian, Idaho

Commission Expires: August 2, 2013

MY COMMISSION EXPIRES

August 2, 2013

BONDED THRU NOTARY PUBLIC UNDERWRITERS

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EXHIBIT "A"

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Exhibit "A"

Legal Description

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EXHIBIT "B"

CONCEPTUAL PLAN

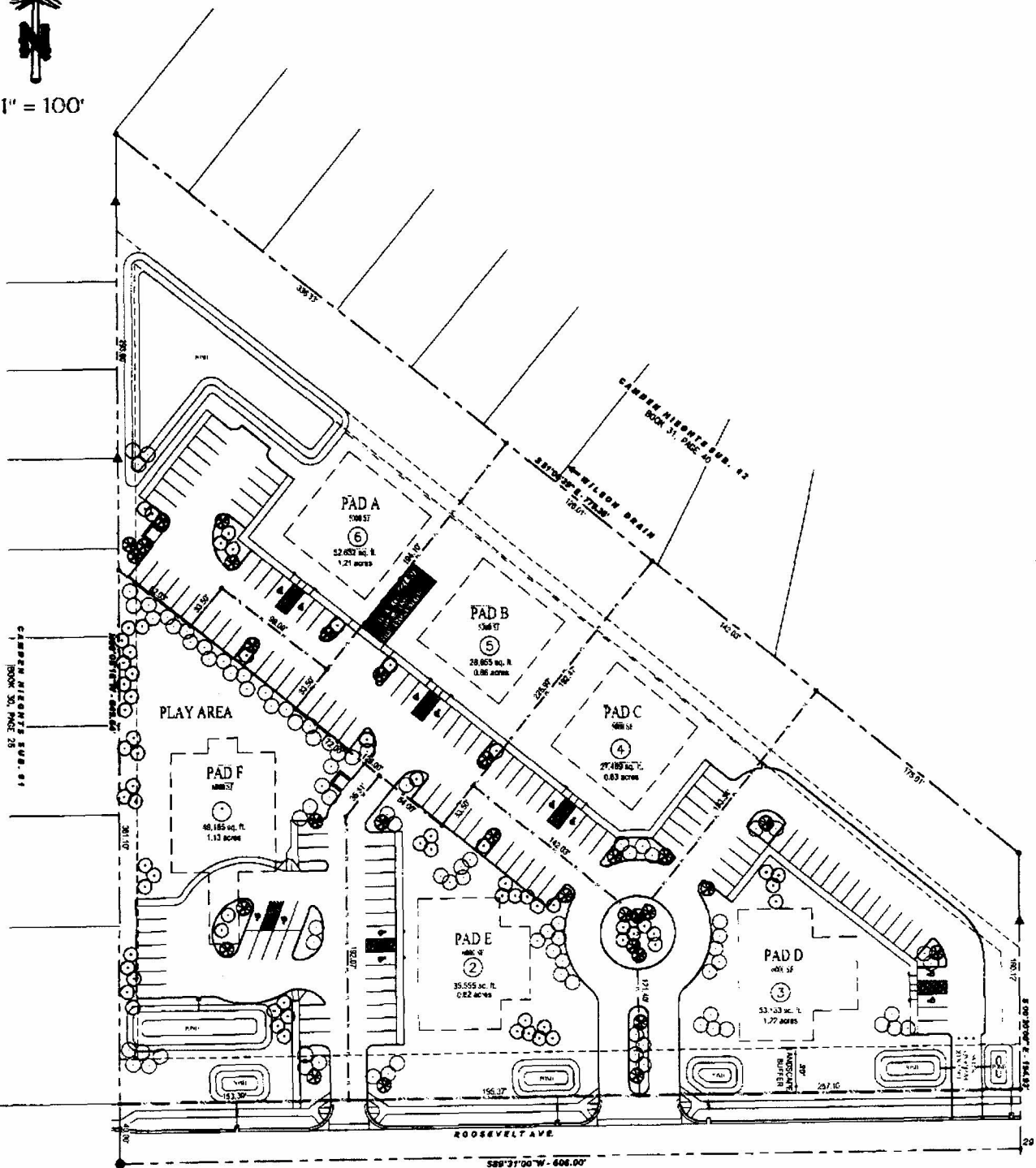
RECORDER SCAN

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Exhibit "B"



1" = 100'



ROOSEVELT BUSINESS PARK

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EXHIBIT "C"

CONDITIONS OF APPROVAL

1. The Owner/Developer agree that they will not oppose the formation of a local improvement district for the construction of any infrastructure associated with the development of the Property.
2. Prior to the third reading of the annexation and zoning ordinance the Owner/Developer shall dedicate any additional right-of-way, as defined by the city engineer, adjacent the Property required for the ultimate build out of any adjacent public roadway(s).
3. No use located on the Property shall be open to the public before 6:00 am in the mornings or after 11:00 pm in the evenings.
4. Building and Site Design: The facades and site development of new business buildings or complexes to be constructed on the Property shall comply with the following standards:
 - a. Structure Placement: The "buildable" portions of properties shall accommodate a non-strip development design. Projects shall be designed to use the least number of vehicular access points, include landscaping and pedestrian benefits, and minimize any negative impact on adjoining properties. Detached sidewalks are encouraged.
 - b. Building Orientation:
 - Buildings shall be oriented with primary consideration being given to the visual impact from arterial streets. The view from arterial streets should be dominated by the view of the primary or front building façade. External views of large expanses of parking lots are strongly discouraged.
 - Buildings shall be oriented to face the most primary, adjacent road to the property upon which they are proposed to be constructed.
 - Loading docks shall not face the front of the property. Also, loading docks shall not face the front of any adjacent principle building when possible, nor any residential use or zoned area.
 - c. Building Exteriors: Facades shall include architectural characteristics which are compatible with the adjoining development and shall be consistent on each building face that is exposed to view from the public right-of-way and/or adjacent to residential use or zone.
 - Buildings shall include changes in plain such as cornices, bases, fenestration, wainscoting, for at least 40% of the exterior, aggregate wall area.
 - Building frontages greater than 100 feet in length shall have offsets, jogs or have other distinctive changes in the building façade.
 - Public entrances shall be easily identified and distinct from the remainder of the building, either through architectural form or use of color, material, and texture of the façade.

- d. **Exterior Finish Materials:** Exterior finish materials shall be non-reflective and shall include at least three colors, textures and/or materials.
- External building materials shall include masonry (e.g., brick, stone, concrete), and exterior insulation finish systems with allowances for accents utilizing alternative materials such as metal, split face block and glass curtain walls.
 - Black and/or bright colors are discouraged and are allowed to only cover 25% of the overall wall square footage.
- e. **Mechanical Units:** Mechanical equipment and utilities shall be placed and installed in such a way as to have minimal impact on adjoining properties, and shall be screened from public view with either proper landscaping or by being contained within an enclosure consistent with the architecture of the main building.
- **Roof mounted:** Mechanical vents protruding through the roof and similar features shall be painted so as to match the color of the roof. Exposed metal flashing or trim shall be anodized or painted to blend with the exterior colors of the building. Roof mounted mechanical shall be screened from public view from any street abutting the property by a screen wall enclosure consistent in appearance with the architectural treatment of the main building.
 - **Ground mechanical equipment and utilities:** Ground mounted equipment and utilities shall be placed and installed in such a way to have the least impact on adjoining properties, and shall be screened from public view with a combination of evergreen and deciduous bushes and trees, with a minimum of 5' depth continuous around utility, these shall be irrigated with landscaping fabric and ground cover, or, to be contained within an enclosure consistent with the architecture of the main building.
- f. **Overhead Doors:** Where possible, any overhead doors for service and/or repair activities and/or loading /unloading activities shall be located at the side of a building which lies opposite to any residential use/zone unless some form of screening such as a wall, landscape berm or other barrier is used to separate the two.
- g. **Parking:** Site development and uses shall conform to parking provisions set forth in Figure 1, Chapters 1 and 22 of Title 10, Planning & Zoning and ANSI accessibility codes. In addition, the following parking lot standards shall apply.
- Parking lots should be located to the side or rear of the primary or front building façade. Where geographic conflicts with this intent occur, landscaping should be used to buffer the visual impact of the parking area.
 - For those buildings fronting Roosevelt, a maximum of twenty (20) percent of parking spaces required shall be allowed in front of the building, a maximum eight (80) percent to the side of the building, and a minimum twenty (20) percent to the rear of the building.
 - Large expanses of parking are highly discouraged and should instead be designed as smaller modules, separated by vegetation.
 - No single parking lot shall contain over 70 parking spaces without at least a ten (10) foot wide vegetated break separating the parking area into two lots being emplaced.

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- Newly constructed parking lots with thirty (30) or more parking spaces therein shall have perimeter vegetation designed to screen the lot from the view from adjacent streets and buildings.

h. **Pedestrian Pathways:** Pedestrian paths shall be established to enhance a site's character and connections. Developments of one acre or more shall provide a pedestrian and bicycle circulation plan for the site.

- Pedestrian amenities shall include: detached sidewalks, connectivity of buildings and parking areas to public spaces and rights-of-way.

5. **Lighting Standards:**

a. All exterior structure lighting shall be shielded, screened, and/or shuttered with ninety degree (90) cutoff luminaries and shall be otherwise directed so as to prevent illumination of adjoining properties, particularly when located adjoining or across the street from residentially used or zoned properties.

- The height of a freestanding light fixture (e.g., in a parking lot area) shall not exceed twenty five feet (25') or the height of the principal permitted structure, whichever is less. Parking area lights shall use ninety (90) degree cutoff luminaries ("down lighting"). Building mounted lights shall not be higher than twenty-five (25) feet from ground level.
- Electrical feeds to outdoor light fixtures shall be placed underground not overhead.
- All lights on site shall be consistent in style, design, height, size and color.
- Lighting to highlight or illuminate architecture and signs shall be attractive without significant spillage of light upward or downward.
- Pedestrian circulation routes shall be illuminated.
- Floodlights shall not be allowed.
- Metal halide bulbs shall not be used.

6. **Fencing/Screening:** Fencing of anything other than mechanical or maintenance-related equipment or stored inventory or trash receptacles is prohibited. Trash receptacles shall be screened with durable materials as found on the related building's facade. Fencing along the Wilson Drain shall be in accordance with the associated subdivision plat's condition(s) unless altered/waived by the City Council via "plat design exception". Alternatively, if no plat is recorded against the Property, then a 5' wrought iron or 6' high solid board cedar fence shall be required/allowed along the Wilson Drain easement that traverses the Property.

7. **Trash Receptacles:** Trash receptacles shall be located in service areas at side or rear yards and not visible from streets abutting a property. Receptacles shall be screened as noted in the above paragraph.

8. **Signs used on the Property** shall comply with all of the underlying provisions of the city sign code for the RP Zone. In addition the following shall govern the provision of advertising signage on the property:

- a. Only signs for building/business identification, public safety and way finding shall be permitted.

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- b. Business signs shall be attractively illuminated without excessive spillage of light upward or outward.
 - c. Signs that are wholly or in part electronic message center displays shall not be allowed notwithstanding any other provision of city code that makes allowances for electronic reader board signs save for one center sign that may be allowed to have a electronic readerboard portion therein provided the same is placed fronting Roosevelt and is conservative in size and display, is permitted through the City's sign permitting process and meets all other respective codes unless approved otherwise via Variance by the City's Council.
 - d. Neon lighting which displays flashing or moving shall not be allowed.
 - e. The color and materials used for the signs shall feature materials, color, and texture of the building for which they advertise.
9. Landscaping: The following landscape standards (in addition to those listed in Title 10, Chapters 22 and 33) shall apply to new building construction:
- a. Location(s) and Quantity of Landscaping Required:
 - General Location Requirement: Landscaping shall be emplaced on a site wherever a structure, pedestrian pathway or parking lot is not located.
 - Arrangement: Landscaping shall be arranged in a natural pattern designed by a landscape architect and shall serve to highlight buildings entrances and pedestrian plazas without encroaching into public right-of-way so as to impede pedestrian and vehicular views or intruding into required vision triangles.
 - Around Building Exteriors: Shrubs and flower beds shall be required around any new building's exterior. They are also required in the front yard of the development to enhance the appearance of a building when viewed from a right-of-way that abuts the development site.
 - Screening: Needled evergreens may be used to help screen mechanical equipment and service areas.
 - Growth Coverage: Plants used in landscaping around a building or on a development site shall be selected to complement the scale of the development area and any building(s) thereon.
 - b. Landscaping Components Requirements:
 - Composition of added plants selected (aside from what is required by Title 10, Chapter 33 for a landscape strip along an arterial or collector street) shall be comprised of at least 50 percent flowering trees.
 - Landscaping shall be designed so that 50% coverage of the site occurs after the first year and 90% coverage occurs after five years.
 - c. Storm Water Retention: Planter areas may be used to absorb onsite storm water in accordance with city storm water regulations.

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